

Jehovah's Witnesses and Medical Practice in Mexico: Religious Freedom, Parens Patriae, and the Right to Life

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The influx of new groups into society, such as recently established religious groups whose practices differ from societal norms, may disturb relatively stable communities. This instability is exacerbated if these practices contravene long-held fundamental societal tenets, such as the protection of children. This situation now exists in Mexico, where the country's traditional Catholic and secular values clash with those of a religion introduced from the United States, Jehovah's Witnesses. The focal point for these clashes, as it has been elsewhere, is in the bioethics arena.

Jehovah's Witnesses is one of Mexico's fastest-growing religious groups, with approximately 150,000 adherents. Of all Latin American nations, only Brazil has a greater number of Jehovah's Witnesses.¹

In 1872, Charles T. Russell founded the International Bible Students Association in Pittsburgh, Pennsylvania. Generally known as Russellites, the group took the name Jehovah's Witnesses in 1931. Their doctrine centers on the Second Coming of Jesus and the establishment of a theocracy. Seeing secular governments as the devil's tools, Witnesses refuse to salute any country's flag, to bear arms, or to participate in government. All members are considered ministers, and the group actively engages in house-to-house solicitations for converts.²

Bioethical dilemmas can arise when Jehovah's Witnesses reject the transfusion of blood or blood products. They base this behavior on their unique interpretation of various biblical passages, including: "Only flesh with its soul—its blood—you must not eat." (Gen. 9:4); "As for any man of the house of Israel or some alien resident who is residing as an alien in your midst who eats any sort of blood, I shall certainly set my face against the soul that is eating the blood, and I shall indeed cut him off from among his people." (Lev. 17:10); "You must not eat the blood of any sort of flesh, because the soul of every sort of flesh is its blood. Anyone eating it will be cut off." (Lev. 17:14); and "Keep yourselves free from things sacrificed to idols and from blood." (Acts 15:20).

In Mexico, as elsewhere, this clash between different value systems has bioethical, legal, and social ramifications when Jehovah's Witnesses parents refuse to allow physicians to give blood or blood products to their minor children with life-threatening problems. One of the major questions is whether minor children, who by legal definition and societal agreement cannot make their own binding decisions about religion or anything else, should be allowed to die because of their parents' religious commitment. (Historically, in Mexico as elsewhere, children have died because their family's religion was not accepted, although our modern society eschews this behavior.) Through its legal actions,

Mexican society has demonstrated that children should not suffer from religiously based medical neglect, although no formal legal doctrine exists on this point. It is, therefore, left to the clinicians involved to act. How they act has become a focal point for bioethics discussions in Mexico.

The Paternalistic Response

When faced with such situations, Mexican physicians usually first attempt to convince the parents that a blood transfusion is essential to save the child's life and that they should consent to such a procedure. Often they are unsuccessful and, as a result, some Mexican physicians revert to their traditional practice of completely bypassing parental authority and values and transfusing the child without parental consent. Although it is not known how often this occurs, this practice has been quite common in Mexico and is in line with the paternalism many Mexican physicians still adopt toward their patients. The paternalistic approach, although well intentioned, disregards the basic respect for persons and families that is the hallmark of modern bioethical thinking—in Mexico, as in many other nations.

Although patient autonomy is not a problem for Mexican physicians to embrace in theory, they find it difficult to adopt in practice. Unfortunately, nearly all physician-patient relationships in Mexico remain somewhat paternalistic. In part, this is because Mexican patients frequently abandon their right to make fundamental healthcare decisions, thus leaving these decisions to their physicians. As a result, some doctors simply do what they believe best without paying much attention to, or even asking for, their patients' or the families' opinions.

This pattern of paternalism is rapidly changing, especially in urban areas where patients often take a more active role in their own and their children's healthcare. One reflection of this change is that almost all urban private and public hospitals now have informed consent forms. The Mexican government requires that physicians use them in all public hospitals, although in what manner and how often they are actually used is unknown. Nevertheless, this represents a positive development in Mexico's physician-patient relationships.

As Mexican physicians struggle with the implications of this new patient-surrogate autonomy, additional problems have arisen. Some parents, for example, now feel that there are no constraints on the medical decisions they can make for their underage children. In a few notable instances when physicians lost sight of their role as the child's advocate and became a mere instrument of parental wishes, this absolute parental autonomy has led to medical neglect and abandonment.

Medical Complicity

Chief among such "parental instruments" is a group of physicians that Mexico's medical community has termed "medical collaborators." These are Mexican physicians working outside the public and university hospitals who withhold the administration of blood or blood products, even when they are clearly indicated or required to save a patient's life. Jehovah's Witness parents who want to be sure that their wishes for their children are followed increasingly turn to these physicians. Few, if any, of these physicians are themselves Jeho-

vah's Witnesses, and they use blood products for their other patients. Parents locate them through a list that their church circulates.

These "medical collaborators" inform Jehovah's Witness parents that the medical treatments are equally effective with or without blood—even when this is not true. This practice constitutes unethical medical care because the physicians withhold needed treatment from children while providing their families with medically inappropriate information. It is not clear why these physicians act as they do. Given that few of them are Jehovah's Witnesses, we surmise that this behavior is meant to attract and retain patients, rather than to support either the physician's religious or ethical beliefs or a scientifically justifiable alternative medical practice. Frequently, there are bad, and sometimes fatal, outcomes from this practice.

Many of these physicians require patients (or their guardians) to sign a contract that relieves the physicians of responsibility for a bad outcome if they use an alternative therapy or abstain from giving "medically indicated" blood transfusions. This, however, does not absolve them of either their ethical or their legal responsibilities. These contracts are *prima facie* violations of the law in Mexico, where no one can agree to give up their life or health. If a patient dies, the physician is held legally responsible regardless of any contract that may have been signed.

Whenever physicians withdraw from their intrinsic fiduciary role, such behavior harms individual patients and deeply undermines the trust and reliance society places in the medical profession.

The Legal Response for Interventions

Many countries, notably those in the Northern Hemisphere, have explicit laws that mandate court interventions on children's behalf when they are in danger. In cases where blood transfusions are necessary to save children's lives, for example, the state overrides parental religious beliefs to allow medical personnel to proceed. In Mexico, this type of national legislation does not exist and physicians in most locales cannot rely on the state to intervene. Thus, when they don't act paternalistically on the child's behalf, doctors in Mexico often pursue a different legal approach than is followed elsewhere in the world.

Mexican physicians frequently ask judges to rapidly intervene when they feel that the life of a child of Jehovah's Witness parents is threatened by not obtaining needed medical treatments. They cannot ask the courts to apply specific statutes, because none exist, so they ask them to employ more generic laws to resolve the situation. Although the pattern varies, physicians and judges generally argue that failing to provide necessary medical care constitutes at least child abandonment and possibly even endangerment to the child's integrity and security. In the Mexican state of Guanajuato, for example, Articles 230 and 231 of the state's penal code serve as one basis for these interventions.^{3,4} The former refers to the crime of abandoning persons who are unable to care for themselves, and the latter to not providing the necessary assistance to these people. Additionally, Article 115 mandates that the Public Ministry start an inquiry into such cases as soon as possible, whether the complaints are from private or official sources.⁵

Such children come under temporary custody of the Integral Family Development agency (DIF), a government institution charged with protecting women's and children's fundamental interests. Yet even when the state acts to

protect a child under the legal principal of *parens patriae* (see below), parents do not lose all rights or control over their child. The child is in the state's custody only temporarily—until completion of the necessary treatments—and parents can visit their child whenever they wish. A judge, however, makes the treatment decisions after listening to the physicians' advice.

Bases for Acting in Children's Best Interests

Parents have both the right to make most decisions for their child and the obligation to make these decisions in their child's best interest. Some decisions, such as whether to educate their child to at least a basic level, are not within the parent's domain. Others are almost wholly parental decisions, such as how to feed, clothe, and discipline them. Yet even with these decisions there are limitations. If parents deviate significantly from an ill-defined basic societal standard in any of these areas, the state steps in to protect the child. This may happen, for example, when the child suffers malnutrition or abuse at the hands of his or her caregivers. Similarly within the parental purview is the child's religious education and practice (or lack thereof).

Religious freedom is an intrinsic human right, which the state has the duty to protect and uphold. As with all other rights, however, the protection of religious freedom has limits.⁶ If religious practices threaten the health or well-being of either those members of a religious group incapable of protecting themselves from religious practices or nonmembers of the religion, the state, through its legal systems, must intervene to maintain the general safety of "persons with legal disabilities." This defines actions imposed under the legal principle of *parens patriae*.⁷

In the case of minors, the state intervenes only when these practices stray into child endangerment. Few would question the state halting religiously inspired child suicide, murder, or mutilation. That intervention comes under the state's duty to protect innocent third parties—in this case, children who, without decisionmaking capacity, are subject to their parent's sometimes-lethal religious tenets. Parents do not have the ethical or legal right to reject medical treatments that are necessary to avoid causing these children morbidity or mortality. In cases where parents do reject such treatment, the state must intervene to protect the child's life and health. If warranted, the state has a duty to prosecute the parents for child abuse or neglect. This action both deals with the individual case and warns others that the society will not tolerate the injury of children, for whatever reason.

When Mexican (and we believe all) physicians have as patients gravely ill children who require the administration of blood or blood products to diminish their chance of morbidity or mortality, and their parents oppose such intervention on religious grounds, physicians have the moral and professional obligation to intervene in favor of the children's right to medical attention. Although no specific Mexican law exists, this fiduciary duty to child-patients has a long tradition in all Western cultures. Once children reach the legal age to make their own healthcare decisions (18 years old in Mexico) and are able to independently choose their own religious belief systems, they can serve as their own advocates and make this type of medical decision themselves. Hopefully, they will seek physician advice at that point and follow a prudent course of action.

However, in the case of child-patients, physicians must act as their medical advocates if the parents fail to protect their children's best interests. Naturally, direct opposition to parental wishes can produce highly tense physician-family relationships. Thus, when physicians must contravene a religious tenet for a child's benefit, it is important that health personnel be attentive to the needs of both the children and the parents, be available to answer questions and field complaints, and explain that the chosen intervention was a standard, medically necessary procedure. It is also extremely important for healthcare personnel to maintain respect for all religious beliefs, even if they do not agree with them or are in the process of overriding them.

The Need for Legal Precedents

The Mexican Constitution recognizes that an innocent person has a right to life. Specifically, Article 4 indicates that parents have an obligation to protect their children's health and life.⁸ Because of this basic constitutional right, the state can and must protect the health and welfare of children even if it means overriding the parents' wishes. Yet this general constitutional right is often not sufficient to assist the medical community when making decisions in controversial cases.

A recent case in our hospital exemplifies the problem. It gained international attention when several human rights organizations publicly supported the medical community and physicians' decisions on behalf of a child. A premature baby, weighing 800 g, was born to Jehovah's Witnesses. He had severe anemia (5g/dL) and sepsis, was on a respirator, and needed a blood transfusion to survive. Only after an intense (but necessarily brief) court battle did the physicians receive judicial permission to transfuse the baby. The baby survived and stayed with his parents, despite any religious stigma that may have accompanied the transfusion and the violation of the parent's privacy from the wide media coverage.

This type of ethically troublesome scenario could be avoided in the future if a legal precedent is firmly established or if clear national laws are enacted. It is important for the Mexican medical, legal, and bioethics communities to focus on the development of explicit laws that will clarify ambiguities in such cases and make the decisionmaking process clear for physicians, families, and the courts.

Conclusion

We believe, as did Justice Rutledge, that "Religious convictions may permit parents to make martyrs of themselves, but it does not follow that they are free to make martyrs of their children."⁹ If the Mexican medical community embraces this idea—which is wholly consistent with long-held medical principles—the Mexican government at all levels must support its physicians with laws and consistent judicial rulings when they come in conflict with parents who neglect their children's welfare in the name of religion.

Notes

1. Berlie E. Las sectas y los migrantes. [The sects and the migrants.] *Ecclesia* 1990;2:222-31.
2. *The Concise Columbia Encyclopedia*. New York: Columbia University Press, 1991.

3. *Artículo 230*. Al que abandone a una persona incapaz de valerse por sí misma teniendo la obligación de cuidarla, se le impondrá sanción de seis meses a dos años de prisión y de tres a veinte días de multa. [A person who leaves someone incapable of tending to himself and who has an obligation to care for him, will receive six months to two years in prison and three to twenty days community service.] Códigos penal y de procedimientos penales para el Estado de Guanajuato, 7ª Ed. Editorial Porrúa, México, 1996.
4. *Artículo 231*. Al que omita prestar el auxilio necesario, según circunstancias, a quien se encuentre amenazado de un peligro personal, cuando pudiese hacerlo sin riesgo alguno, o al que no estando en condiciones de auxiliar omita dar aviso de inmediato a la autoridad, se le impondrá de un mes a un año de prisión o de tres a veinte días de multa. [One who does not provide necessary aid, according to circumstances, to anyone who is threatened with personal danger, when it can be done without risk, or who does not immediately warn authorities, will receive a month to a year in prison or three to twenty days community service.] Códigos penal y de procedimientos penales para el Estado de Guanajuato, 7ª Ed. Editorial Porrúa, México, 1996.
5. *Artículo 115*. Tan luego que el Ministerio Público a los funcionarios encargados de practicar en su auxilio diligencias de averiguación previa, tengan conocimiento de la probable existencia de un delito que deba perseguirse de oficio, dictarán todas las providencias necesarias. . . . Lo mismo se hará tratándose de delitos que solamente puedan perseguirse por querrela, si ésta ha sido formulada. . . . [As soon as the responsible Public Ministry has investigated and has knowledge of a probable crime, their office must prosecute as the law directs. For those crimes that can only be prosecuted after a complaint has been made, the same action will occur after such a complaint.] Códigos penal y de procedimientos penales para el Estado de Guanajuato, 7ª Ed. Editorial Porrúa, México, 1996.
6. *Artículo 24*. Todo hombre es libre de profesar la creencia religiosa que más le agrade y para practicar las ceremonias, devociones o actos del culto respectivo, en los templos o en su domicilio particular, siempre que no constituyan un delito o falta penados por la ley. Todo acto religioso de culto público deberá celebrarse precisamente dentro de los templos, los cuales estarán siempre bajo la vigilancia de la autoridad. [All men are free to profess their religious beliefs, to practice their religious ceremonies, devotions or acts in their temples or other locations, as long as the actions are not criminal. All public religious acts must be celebrated within temples, which the authorities will monitor.] Constitución Política de los Estados Unidos Mexicanos, 9ª Ed. Ediciones Delma, México, 1995.
7. Black HC. *Black's Law Dictionary*, 5th Ed. St. Paul, Minn.: West Pub. Co., 1979:1003.
8. *Artículo 4*. Toda persona tiene derecho a la protección de la salud. . . . Es deber de los padres preservar el derecho de los menores a la satisfacción de sus necesidades y a la salud física y mental. La ley determinará los apoyos necesarios a la protección de los menores, a cargo de las instituciones públicas. [All persons have a right to the protection of the health. . . . Parents must provide minors' with their necessities to maintain physical and mental health. The law will determine what is necessary to protect minors.] Constitución Política de los Estados Unidos Mexicanos, 9ª Ed. Ediciones Delma, México, 1995.
9. *Prince v. Massachusetts*, 321 U.S. 158, 170, reh'g denied, 321 U.S. 804 (1944).